

British Columbia Securities Commission

COORDINATED BLANKET ORDER 93-930

Temporary exemptions for derivatives firms from certain obligations when transacting with certain investment funds and for senior derivatives managers from certain reporting obligations

September 17, 2024

Definitions

1. Terms defined in the *Securities Act* (British Columbia) (the Act), National Instrument 14-101 *Definitions* and National Instrument 93-101 *Derivatives: Business Conduct* (the Business Conduct Rule) have the same meaning in this Order.

Background

2. On July 11, 2024 the British Columbia Securities Commission (the Commission) published advance notice of adoption of the Business Conduct Rule. Subject to ministerial approval, the Business Conduct Rule comes into force on September 28, 2024.

Certain investment funds advised by or managed by foreign advisers or investment funds managers

3. The Business Conduct Rule uses a two-tiered framework to regulate the conduct of derivatives firms:
 - (a) certain obligations in the Business Conduct Rule apply to all transactions, whether a derivatives firm is transacting with an eligible derivatives party (an EDP) or a non-eligible derivatives party (a non-EDP):
 - (i) Division 1 [*General obligations towards all derivatives parties*] of Part 3 [*Dealing with or advising derivatives parties*];
 - (ii) sections 24 [Application and interaction with other instruments] and 25 [Segregating derivatives party assets];
 - (iii) section 28(1) [Content and delivery of transaction information]; and
 - (iv) Part 5 [Compliance and recordkeeping] (collectively, the core obligations), and
 - (b) all other obligations in the Business Conduct Rule apply only when a derivatives firm is transacting with a non-EDP (the additional obligations).
4. The EDP designation in this framework functions as a status test to distinguish between derivatives parties that have sufficient sophistication or financial resources (i.e., EDPs) and those that do not (i.e., non-EDPs). While transactions by derivatives firms with EDPs require adherence to only the core obligations in the Business Conduct Rule, transactions with non-EDPs require adherence to both the core obligations and the additional obligations.

5. After finalizing the Business Conduct Rule, staff of the Commission received submissions from certain derivatives market participants that a derivatives party that is an investment fund would qualify as an EDP under paragraph (l) of the EDP definition where it is managed or advised by a registered investment fund manager or a registered adviser under the securities legislation of a jurisdiction of Canada, but would be a non-EDP where it is managed or advised by an investment fund manager or adviser that is registered or authorized to carry on business under the legislation of a foreign jurisdiction, including a foreign investment fund manager or adviser registered with or authorized by the United States Securities and Exchange Commission. This inconsistency does not align with paragraph (k) of the EDP definition in the context of managed accounts, which allows a derivatives party that is a managed account to be considered an EDP, regardless of it being managed by a registered or authorized adviser or derivatives adviser under the securities legislation of a jurisdiction of Canada or by a registered or authorized foreign equivalent adviser.

Timing of reporting responsibilities of senior derivatives managers

6. The Business Conduct Rule requires a senior derivatives manager of a derivatives dealer to submit, in each calendar year, the report referred to in section 32(3)(a) (the SDM Compliance Report) to their board of directors (Board). Since the Business Conduct Rule comes into force on September 28, 2024, a senior derivatives manager is required to submit an SDM Compliance Report to their Board for the calendar year ending December 31, 2024.
7. Derivatives firms that are subject to the derivatives legislation of certain foreign jurisdictions have reporting obligations in the foreign jurisdictions that are similar to the reporting obligations they have under the Business Conduct Rule (the Foreign Compliance Report).
8. Staff received submissions from certain derivatives market participants that
 - (a) the timeline for submitting a SDM Compliance Report within the 2024 calendar year does not align with established timelines and internal processes for submitting a Foreign Compliance Report in the same calendar year, and
 - (b) since a SDM Compliance Report submitted in 2024 would cover only the last quarter of 2024, requiring submission for the calendar year ending December 31, 2024 would serve limited purposes and introduce unnecessary operational burdens and complexities, considering the short timeframe.
9. As a result, Staff received a request to provide exemptive relief in relation to the SDM Compliance Report for 2024.

Exemptive Relief

10. The proposed exemptions will, subject to compliance with applicable conditions
 - (a) ensure that investment funds managed by an investment fund manager or advised by an adviser regulated in a foreign jurisdiction have the same treatment as an investment fund managed by an investment fund manager or advised by an adviser regulated in Canada,

- (b) exempt senior derivatives managers from the obligation to prepare and submit a SDM Compliance Report to the Board for the calendar year ending December 31, 2024.

Order

11. Considering that it would not be prejudicial to the public interest to do so, the Commission orders under section 187(c) of the Act that

- (a) a derivatives firm is exempt from the provisions of the Business Conduct Rule, other than the core obligations, in relation to a transaction with a derivatives party, if the derivatives party is an investment fund that is
 - (i) managed by a person or company that is the equivalent of a registered or authorized investment fund manager under the securities legislation or commodities futures legislation of a foreign jurisdiction, or
 - (ii) advised by the equivalent of a registered or authorized adviser under the securities legislation or commodities futures legislation of a foreign jurisdiction, and
- (b) a senior derivatives manager is exempt from the obligation under subsection 32(3) of the Business Conduct Rule to prepare and submit to their Board a SDM Compliance Report for the calendar year ending December 31, 2024, if
 - (i) the derivatives firm is in compliance with all other applicable provisions of the Business Conduct Rule, including, for greater certainty, section 33, which sets out the obligation of a derivatives dealer to report instances of material non-compliance to the applicable regulator or securities regulatory authority;
 - (ii) a senior derivatives manager relying on this exemption submits a SDM Compliance Report in the 2025 calendar year that is inclusive of the period between September 28, 2024 and December 31, 2024.

Effective Date and Term

12. This Order comes into effect on September 28, 2024.

For the Commission:

Gordon Johnson
Vice Chair
BC Securities Commission